

Note to Parties: In the event of material changes to the planned property use requiring substantial changes to the cleanup, the terms of this Restrictive Covenant will be reviewed and potentially revised.

Exhibit D: Restrictive Covenant

After Recording Return to:

Department of Ecology
Northwest Regional Office
3190 160th Ave. SE
Bellevue, WA 98008-5452

Environmental Covenant

Grantor: Block at Ballard II LLC

Grantee: State of Washington, Department of Ecology

Legal:

PARCEL A

LOTS 1-6 AND 17-22, BLOCK 173, GILMAN PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE(S) 40, RECORDS OF KING COUNTY, WASHINGTON

PARCEL B

LOTS 7-16, BLOCK 173, GILMAN PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE(S) 40, RECORDS OF KING COUNTY, WASHINGTON

SUBJECT TO AN EASEMENT OVER THE SOUTHEASTERLY PORTION OF LOT 12 FOR A SPUR TRACT AS RECORDED UNDER KING COUNTY RECORDING NUMBER 3761195

Tax Parcel Nos.: To Be Determined

Grantor, Block At Ballard II LLC, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this _ day of _____, 2009 in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of

enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Block at Ballard II LLC, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred under a Consent Decree with Ecology at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

Remedial Investigation, Feasibility Study, and Proposed Cleanup Action, XXX(date).
Sound Environmental Strategies Corporation.

Cleanup Action Plan, XXX(date). Washington State Department of Ecology.
These documents are on file at Ecology's Northwest Office.

This Covenant is required because the Remedial Action resulted in residual concentrations of polycyclic aromatic hydrocarbons (PAHs) and arsenic, which exceed the Model Toxics Control Act Method A Cleanup Level(s) for soil established under WAC 173-340-745.

The undersigned, Block at Ballard II LLC, is the fee owner of real property (hereafter "Property") in the County of King, State of Washington, that is subject to this Covenant. The Property is legally described as follows:

PARCEL A
LOTS 1-6 AND 17-22, BLOCK 173, GILMAN PARK, ACCORDING TO THE PLAT
THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE(S) 40, RECORDS OF KING
COUNTY, WASHINGTON

PARCEL B
LOTS 7-16, BLOCK 173, GILMAN PARK, ACCORDING TO THE PLAT THEREOF
RECORDED IN VOLUME 3 OF PLATS, PAGE(S) 40, RECORDS OF KING COUNTY,
WASHINGTON

SUBJECT TO AN EASEMENT OVER THE SOUTHEASTERLY PORTION OF LOT 12
FOR A SPUR TRACT AS RECORDED UNDER KING COUNTY RECORDING NUMBER
3761195

Block at Ballard II LLC makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. Portions of the Property adjacent to the north, south, and east Property boundaries (located outside of the shoring system and construction excavation footprints) contain residual PAH and arsenic contaminated soil associated with the Property. These Property portions are designated Area B and are depicted on the attached Figures 1 through 8 (Exhibit A). Area B is completely capped by concrete sidewalks. A three-foot wide concrete foundation and shoring wall separates the parking garage from Area B. The sidewalks and the foundation and shoring wall system were installed as components of the redevelopment project (Figures 1, 2, 4, 5, 6, 7, and 8). Any activity that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

A second area located in NW 46th Street adjacent to the north Property boundary contains PAH and arsenic contaminated soil. This area is designated Area C and is shown on the attached Figures 1, 2, and 5 (Exhibit A). With respect to Area C, the covenant will extend from 6 feet below ground surface (bgs) to below the maximum depth of soil contamination encountered 13 feet bgs (Figure 5). Area C is located within the City of Seattle (hereafter "City") right-of-way (ROW). Area C is completely capped by a concrete sidewalk and the asphalt paved street surface. If the City is conducting any repair work at the depth between 6 feet bgs and 13 feet bgs within Area C, the City is responsible for following health and safety and soil management protocols as defined in the Soil Management Plan (Plan must be approved by Ecology prior to recording of this Covenant). Any other activity that may result in the release or exposure to the

environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Examples of such other activities that are prohibited include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. Any activity that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Unless authorized by the Cleanup Action Plan or this Restrictive Covenant, no activity is permitted on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, without prior written approval from Ecology.

Section 4. The Owner must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property other than the lease of individual units within the improvements to be constructed on the property. No conveyance of title, easement, lease, or other partial interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the terms of this Covenant and notify all lessees of the restrictions on use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of Area B, or any use by Owner of Area C, that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment. The Owner will notify Ecology upon evidence that the City is using Area C in a manner inconsistent with the terms of this Covenant.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 7. The Owner reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

Block at Ballard II LLC

[Name of Signatory]
[Title]

Dated: _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Name of Person Acknowledging Receipt]
[Title]

Dated: _____

[INDIVIDUAL ACKNOWLEDGMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

[CORPORATE ACKNOWLEDGMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** is the _____ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

Notary Public in and for the State of
Washington, residing at _____.

My appointment
expires _____.

[REPRESENTATIVE ACKNOWLEDGEMENT]

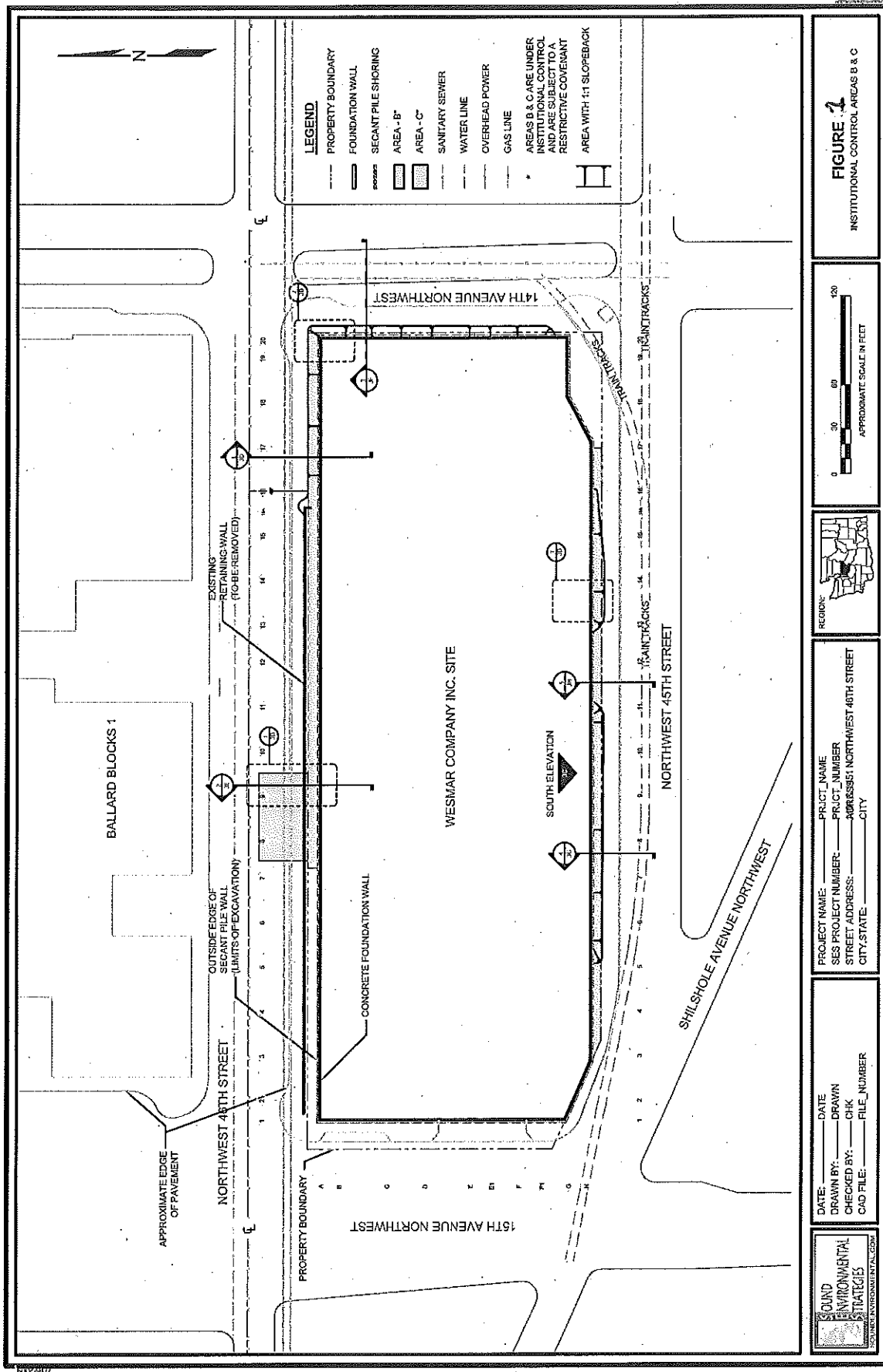
STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the

_____ [type of authority] of _____ [name of
party being represented] to be the free and voluntary act and deed of such party for the uses
and purposes mentioned in the instrument.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

Exhibit A
Figures **1-8**



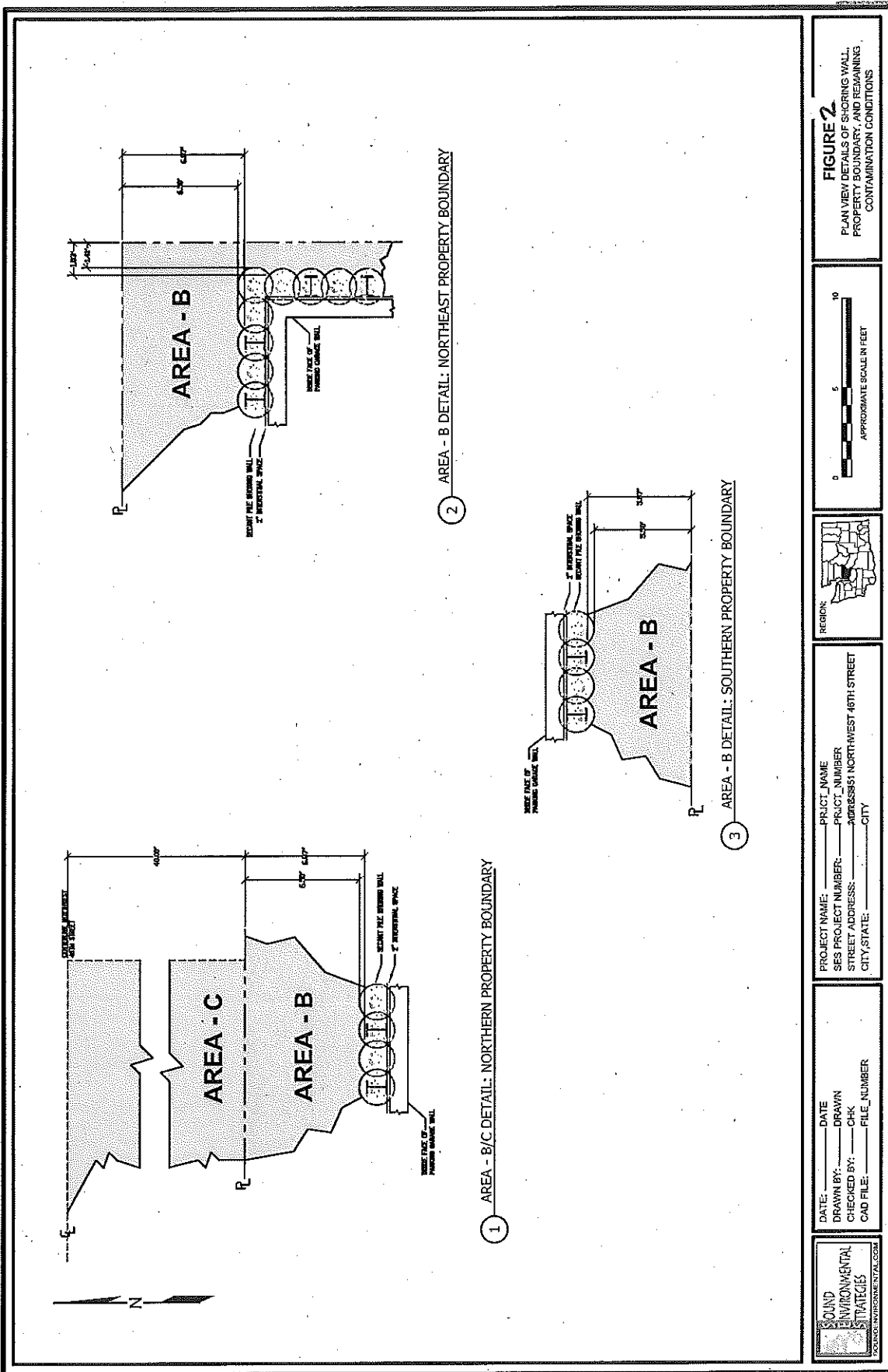
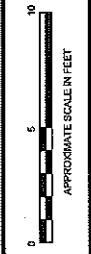


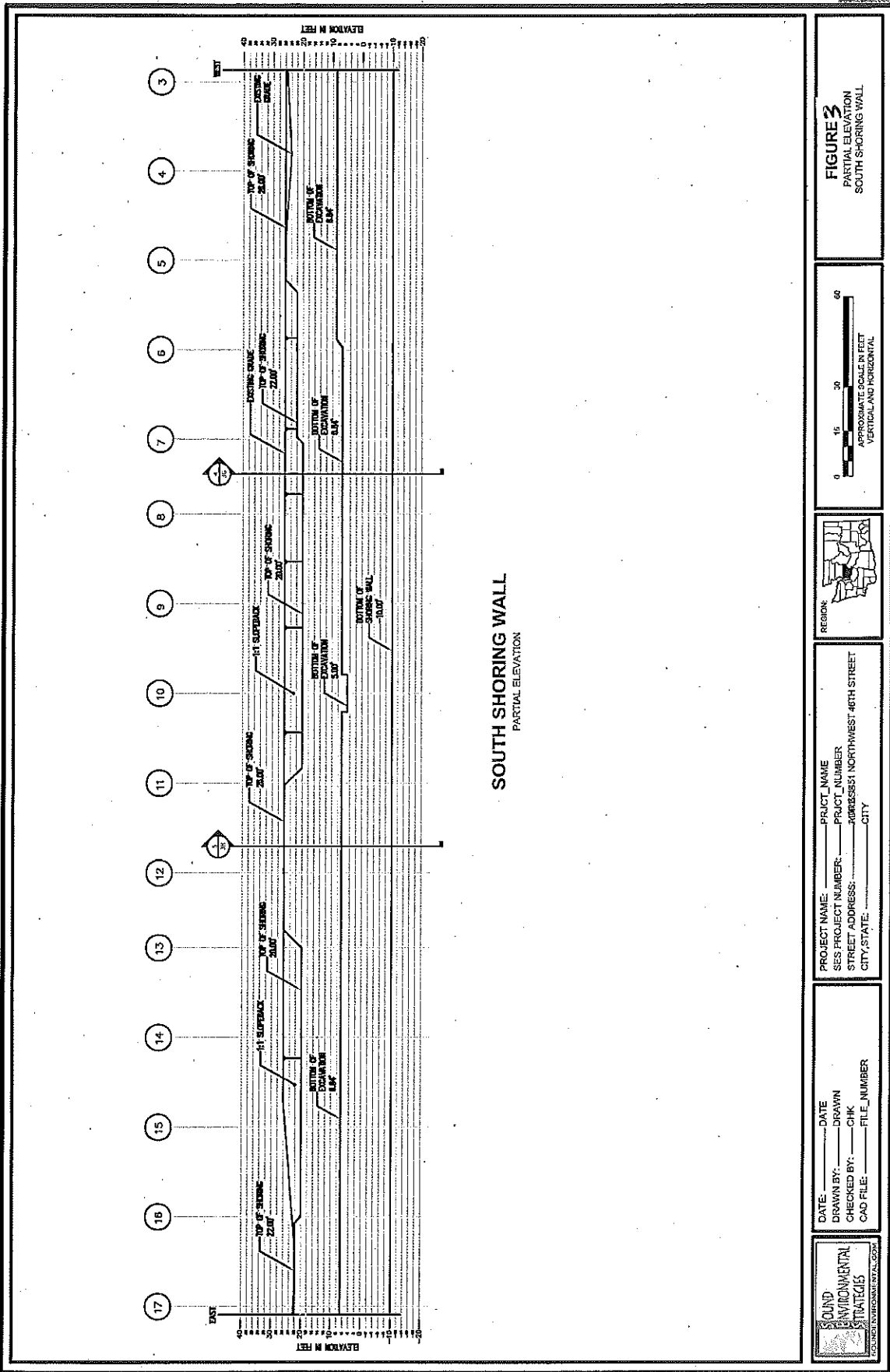
FIGURE 2
PLAN VIEW DETAILS OF SHORING WALL,
PROPERTY BOUNDARY, AND REMAINING
CONTAMINATION CONDITIONS



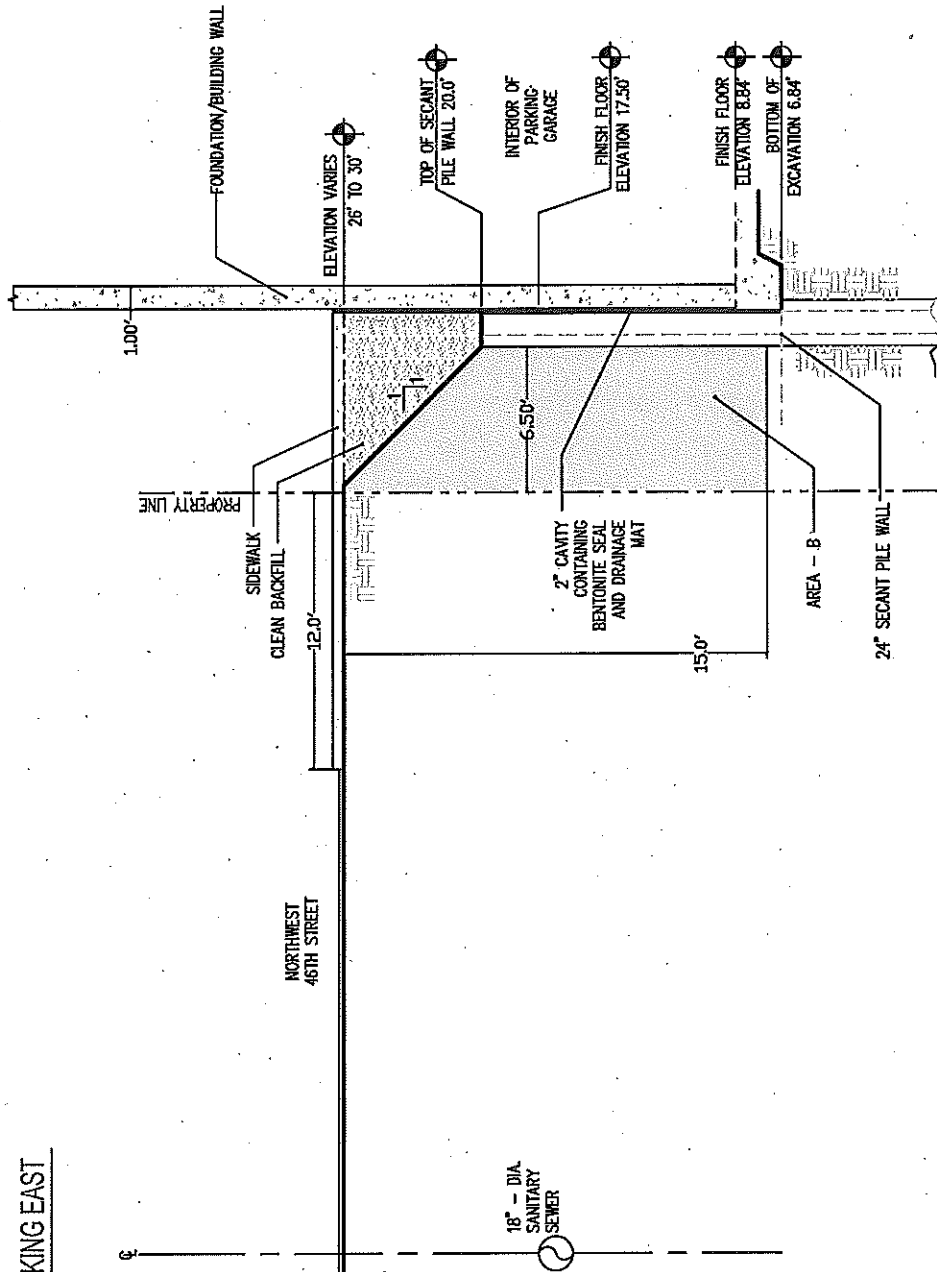
PROJECT NAME: _____ PROJECT NUMBER: _____
 SES PROJECT NUMBER: _____ STREET ADDRESS: _____ NORTHWEST 48TH STREET
 CITY/STATE: _____ CITY _____

DATE: _____ DATE
 DRAWN BY: _____ DRAWN
 CHECKED BY: _____ CHK
 CAD FILE: _____ FILE NUMBER





SECTION AT NORTH LOOKING EAST



DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 CAD FILE: _____

PROJECT NAME: _____
 SES PROJECT NUMBER: _____
 STREET ADDRESS: _____
 CITY/STATE: _____

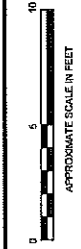
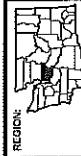
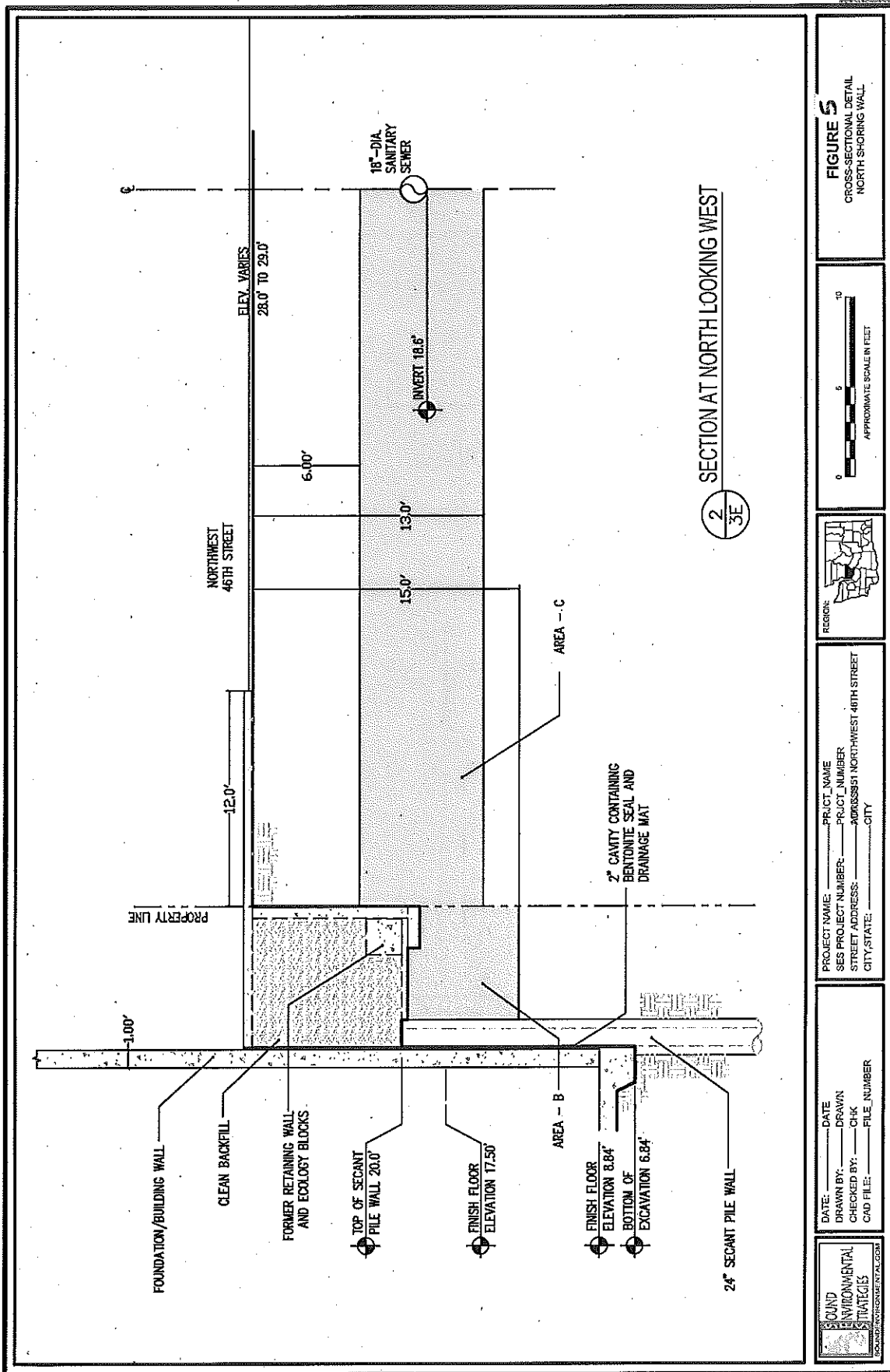
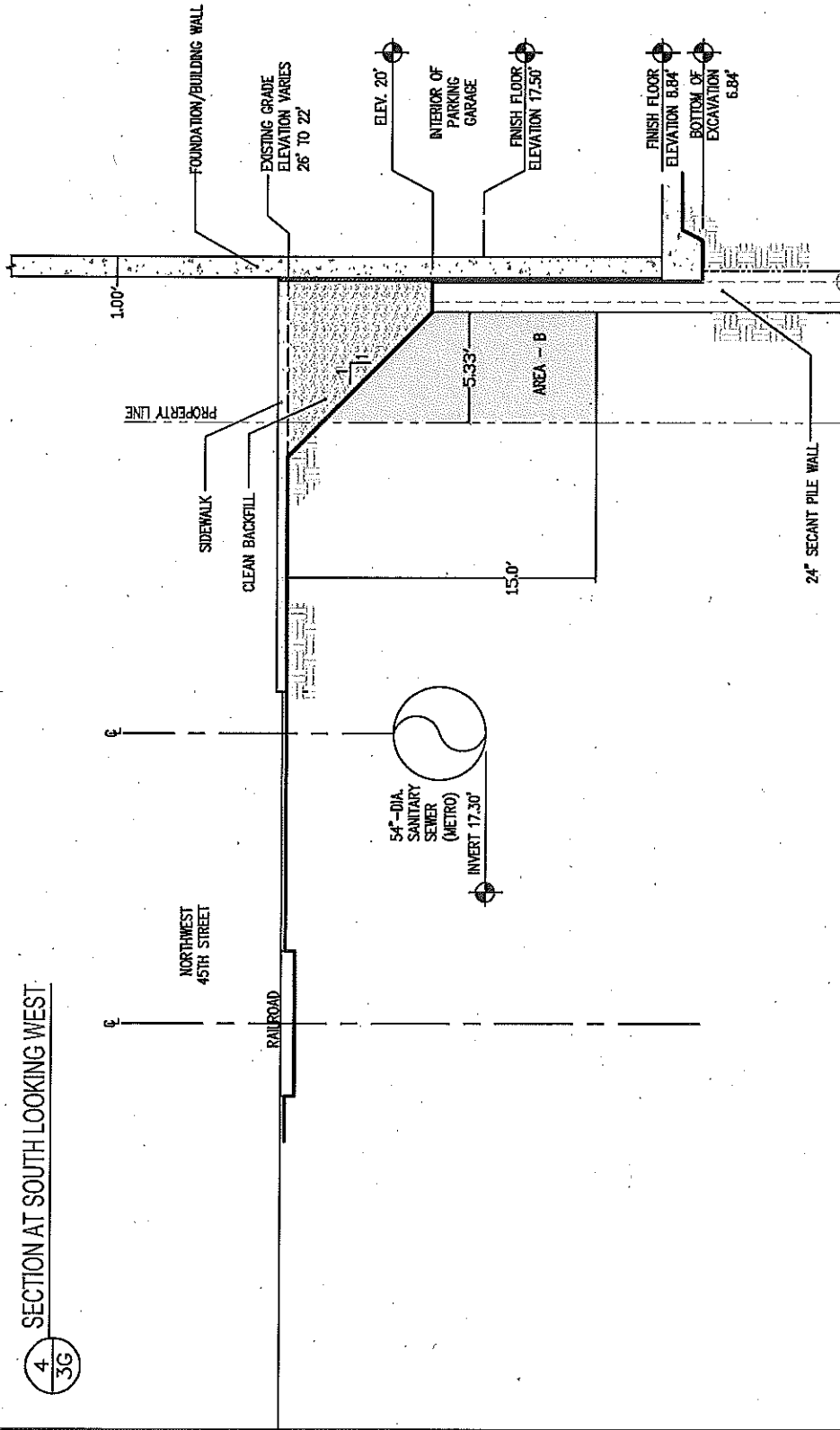


FIGURE 4
 CROSS-SECTIONAL DETAIL
 NORTH SHORING WALL



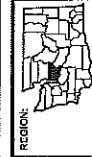
SECTION AT SOUTH LOOKING WEST

4
3G



DATE: _____ DATE
DRAWN BY: _____ DRAWN
CHECKED BY: _____ CHK
CAD FILE: _____ FILE_NUMBER

PROJECT NAME: _____ PROJECT_NUMBER
SES PROJECT NUMBER: _____ PROJECT_NUMBER
STREET ADDRESS: _____ ADDRESS451 NORTHWEST 46TH STREET
CITY, STATE: _____ CITY



APPROXIMATE SCALE IN FEET
0 5 10

FIGURE 7
CROSS-SECTIONAL DETAIL
SOUTH SHORING WALL

SECTION AT SOUTH LOOKING WEST

5
3H

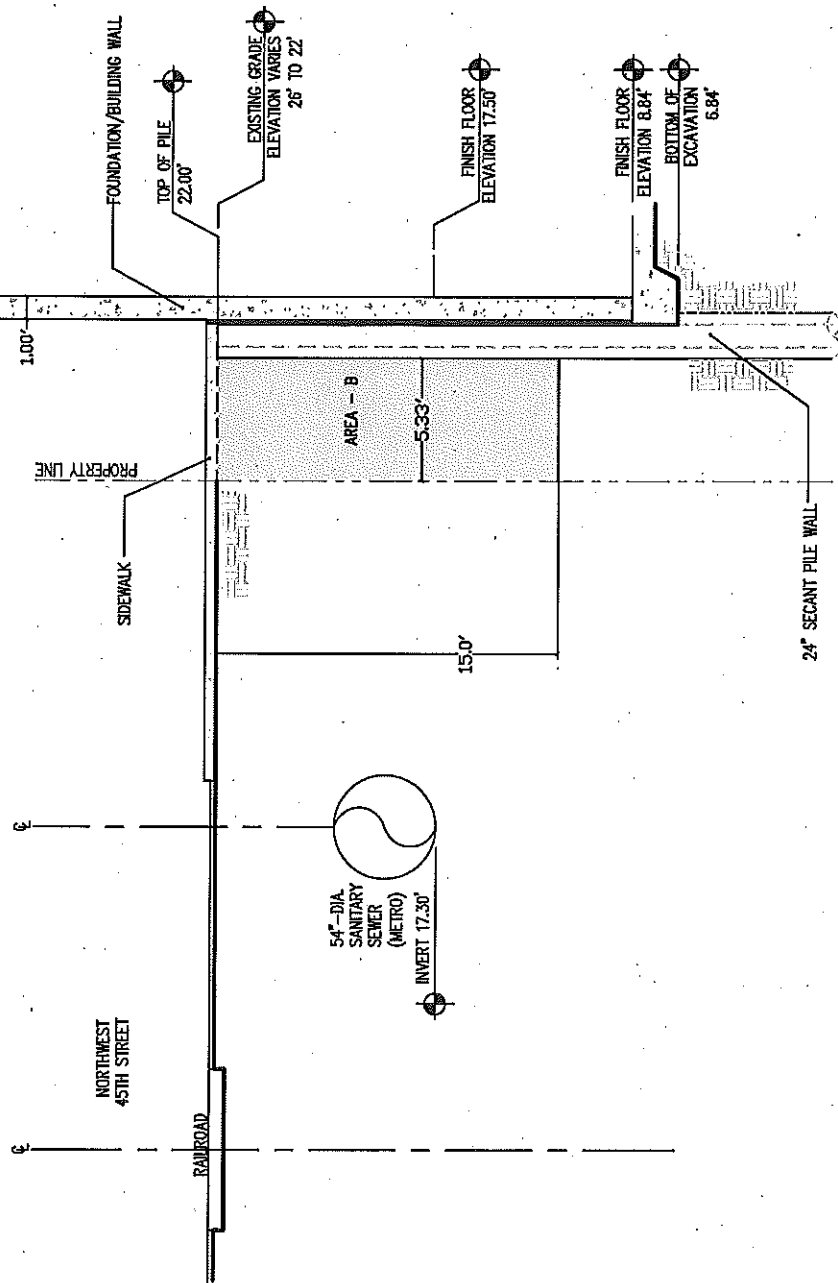
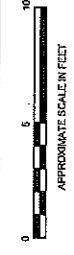


FIGURE 8
CROSS-SECTIONAL DETAIL
SOUTH SHORING WALL



PROJECT NAME: _____ PRCT. NAME _____
 SES PROJECT NUMBER: _____ PRCT. NUMBER _____
 STREET ADDRESS: _____ ADDRESS51 NORTHWEST 46TH STREET
 CITY, STATE: _____ CITY _____

DATE: _____ DATE _____
 DRAWN BY: _____ DRAWN _____
 CHECKED BY: _____ CHK _____
 CAD FILE: _____ FILE NUMBER _____

